SUMMARY OF ISRAEL'S LEGAL RIGHTS TO JUDEA AND SAMARIA

by Ted Belman

Background:

The Middle East was a part of the Ottoman Empire, which had ruled it some 400 years when World War I broke out. The Ottomans allied themselves with Germany. And so it was that, when the war ended, the Ottomans had lost their land. As part of the readjustments, the map of the huge area we call the Middle East was reconfigured. The original plan was to create a Jewish state in what the British called Mandatory Palestine (some 45,000 square miles on both sides of the Jordan river) and an Arab state in the rest of the region. In 1922, the British put the Hashemite family in charge of "administering" the area on the east side of the Jordan -- some 78% of the land destined to be the Jewish state -- leaving the Jews with some 8,840 square miles, 1/10 of 1% of the area of the Middle East, for a future homeland. The land holdings of the 22 Arab League countries, in contrast, is 6,145,389 square miles.

1. According to international law, the Jewish people are the sole beneficiary of Self-Determination in the land that was Mandatory Palestine. The rights of the Jewish People to Palestine are enshrined in three legally binding international treaties. These rights have *not* expired and are still in full force and effect. [1]

The process began at San Remo, Italy, when the four Principal Allied Powers of World War I — Great Britain, France, Italy and Japan — agreed to create a Jewish national home [*] in what is now the Land of Israel.

a. **The 1920 San Remo Resolution**

This was passed by the San Remo Supreme Council. This council was given the power of disposition by the Great Powers and was convened for the purpose of dividing what was the Ottoman Empire, i.e, redrawing the borders of the Middle East and giving its land to its original inhabitants.

The relevant resolution reads as follows:

> "The High Contracting Parties agree to entrust... the administration of Palestine, within such boundaries as may be determined by the Principal Allied Powers, to a Mandatory [authority that] will be responsible for putting into effect the [Balfour] declaration... in favor of the establishment in Palestine of a national home for the Jewish people."

The San Remo Resolution also bases itself on Article 22 of the Covenant of the League of Nations, which declares that it is "a sacred trust of civilization" to provide for the well-being and development of colonies and territories whose inhabitants are "not yet able to stand by themselves under the strenuous conditions of the modern world." Specifically, a resolution was formulated to create a Mandate to form a Jewish national home in Palestine.

Professor Jacques Gauthier wrote that the San Remo treaty specifically notes that "nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine" - but says nothing about any "political" rights of the Arabs living there.[2]

b. **The 1922 Mandate for Palestine**

The League of Nations' resolution creating the Palestine Mandate included the following significant clause: "Whereas recognition has thereby been given to the historical connection of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country." No such recognition of Arab rights in Palestine was granted.

c. **The 1924 Anglo-American Convention on Palestine.**

The United States of America ratified a treaty with the British Government known as the Anglo-American Treaty of 1924, which included by reference the aforementioned Balfour Declaration and includes, verbatim, the full text of the Mandate for Palestine.

> "Whereas the Principal Allied Powers have also agreed that the Mandatory should be responsible for putting into effect the declaration originally made on the 2nd of November 1917, by the Government of His Britannic Majesty, and adopted by the said Powers, in favour of the establishment in Palestine of a national home for the Jewish people..."

The United States of America is legally bound to the principles contained in the "Balfour Declaration" and the "Mandate for Palestine."

2. The British Mandatory was not a sovereign. All its rights and obligations relating to Palestine, emanated from the Mandate of Palestine. The Mandatory was a trustee for the League of Nations, and it was not given the power to take any steps which violated the terms of the Mandate. It could not change the terms of the Mandate at its pleasure, as it did in the following two cases:

a. Ceding 77.5 % of Palestine to Trans Jordan (in 1922)
b. Ceding the Golan to Syria (in 1923)

3. The Mandatory violated article 5 & article 27 of the Mandate when it ceded 77.5% of Palestine to TransJordan and the Golan to Syria:

> ART. 5. "The Mandatory shall be responsible for seeing that no Palestine territory shall be ceded or leased to, or in any way placed under the control of the Government of any foreign Power."

> ART. 27: The Mandatory had no right to amend the Mandate terms without the full consent of the League of Nations or its Mandates Commission.

4. In the **1924 Anglo American Convention** the U.S. agreed to support Great Britain as a Mandatory so long as the Mandatory abided by the San Remo Resolution. The sole purpose of the Resolution regarding Palestine was:

a. Drawing the borders of Palestine
b. Reconstituting Palestine as a National Homeland for the Jewish People worldwide
c. Recognizing the Jewish People's historical connection to the land

There was not even one word in the Mandate or the Anglo American convention about creating an Arab land in Palestine.

In November 2009, the Office for Israeli Constitutional Law (OFICL), a non-governmental legal action organization, sent a letter to US Secretary of State Hillary Clinton, warning that by labeling Jewish settlements in the West Bank illegal, she is violating international law, as well as American law. OFICL directer Mark Kaplan said:

> "The mandate expired in 1948 when Israel got its independence, but the American-Anglo convention was a treaty that was connected to the mandate. Treaties themselves have no statute of limitations, so their rights go on *ad infinitum*."

5. **The Lodge-Fish Resolution of September 21, 1922,** was a Joint Resolution passed by both houses of the U.S. Congress and signed by President Warren Harding, endorsing the Balfour Declaration with slight variations. This made the text of the Joint Resolution part of the law of the United States until this very day.

> "Resolved by the Senate and House of representatives of the United States of America in Congress assembled, that the United states of America favors the establishment in Palestine of a national Home for the Jewish people..."

confirming the irrevocable right of Jews to settle in the area of Palestine — anywhere between the Jordan River and the Mediterranean Sea:

6. Under American Law when a joint resolution is passed by both the Senate and the House of Representatives in an identical form and then signed by the President, it becomes the Law of the U.S.

7. Both the Lodge-Fish Resolution and the Anglo American Convention underwent the above noted process (see point 6). Therefore reconstituting Palestine as a National Homeland for the Jewish People worldwide and recognizing their historical connection to the land became part of US LAW.

Any attempt to negate the Jewish people's right to Palestine — Eretz-Israel — and to deny them access and control in the area designated for the Jewish people by the League of Nations is an actionable infringement of both international law and the Supremacy Clause (Article VI, paragraph 2 of the United States Constitution), which dictates that Treaties "shall be the supreme Law of the Land".

8. The 1924 Anglo American Convention on Palestine included the whole text of the Palestine Mandate. The Palestine Mandate included the Balfour declaration preamble committing to reconstitute Palestine as a National homeland for the Jewish People worldwide and to recognize their historical connection to the land. It did not mention anything about creating an Arab State in Palestine. The Mandate explicitly prohibited ceding any land in Palestine to any foreign powers or changing the terms of the Mandate without the League's expressed permission. That permission had to be unanimously passed by all members. That never occurred.[3]

9. The significance of the above (see #8) is that no decision made by the US or Britain, may be in conflict with the terms of the Mandate or the Anglo American Convention. France, Italy and Japan sat on the San Remo Supreme Council - along with the US and Britain - approving the San Remo decision. After the Supreme Council approved the San Remo decision, the resolution was further approved by the League of Nations and its 51 members. This resolution became a binding international Treaty. The Treaty became *Res Judicata*. Consequently all the above noted countries are bound by their own approval. Thus they are prevented from changing their approval without Israel's consent.

10. No decision, policy or measure taken by subsequent American administrations may be in conflict with the Terms of the Palestine Mandate. (The sole purpose of the Mandate was-to reconstitute Palestine as a national homeland for the Jewish People world-wide and recognize their historical connection with the land.) Under the Doctrine of Estoppels the US is estopped from making policies, taking any steps, measures, spending any monies on policies, which run contrary to its covenants and undertaking under the Anglo-American Convention of 1924, because among other things they are violating US Law.

11. **Both their Excellencies, the Emir Faisal and Abdullah approved the League of Nations decisions.** At different points in history, Emir Faisal, in an agreement with Weitzman, agreed to support the Zionist claim on both sides of the Jordan river and later Abdullah, agreed with Churchill to support the Zionist claim to the territory from the Jordan river to the Mediterranean, including Judea and Samaria and Gaza, and the Golan Heights. The Supreme Council did not want to approve the final borders of Palestine on both sides of the Jordan until they had the approval of Emir Feisal.[4]

12. **All rights emanating from the three international treaties were approved by the League of Nations and inherited by the United Nations. They did not expire. The United Nations had no right to vary them.**

> The UN has no right to pass a resolution which ran contrary to an existing earlier decision/ resolution on its books.
>
> The UN or Britain are not sovereigns and had no right to change borders at its pleasure.
>
> The same Supreme Council that drew the borders for Iraq Syria and Lebanon, gave Israel the right to its borders from the Jordan to the Mediterranean. This was approved by the League, and its members: Britain, France, Japan and Italy. They have no right to vary that which they had approved.

13. The General Assembly does not have the right to create enforceable resolutions or borders. So even if the Arabs had accepted the Green Line [the armistice lines after the 1948 Arab-Israeli war], these borders would not have been legally enforceable.

14. **The Partition Plan of 1947 only demarcated the cease fire lines. It had no binding legal force.**

- It was not approved by the Arabs. In order for the Green Line to have had any sort of legal significance that approval would have been necessary at the very least;
- The General Assembly has no power to change borders. Therefore its decision or advice was insignificant from a legal perspective.
- The UN has no power to vary an existing valid international treaty which the League of Nations - its predecessor - had approved. (*Res Judicata*). The UN inherited from the League of Nations the granting to Israel of the lands between the Mediterranean and the Jordan River.
- The UN has no power to draw new agreements which run contrary to existing valid International Agreements or treaties which it had inherited from its predecessor, the League of Nations.
- No borders decided by the San Remo Conference and approved by the League of Nations, save those of Israel, were ever challenged or changed;
- In 1923 Britain - the Mandatory and Trustee of the Palestine Mandate of 1922, and of the British American Convention of 1924 - contrary to the explicit terms of the Mandate, ceded the Golan to Syria.[5]

> "This treaty which was concluded by the principal powers, in effect, as representative of the League of Nations, is binding on the League, particularly after it approved it. The League cannot therefore change the mandate provisions. (Nor, of course, does the Mandatory have that right)"[6]

OFICL chairman Michael Snidecor has stated, "The General Assembly has no authority to create countries or change borders. The UN partition plan [1967] was just that -- a plan."

Significant precedents:

1. The Vienna decision on treaties: According to Howard Grief:

Rights gained from Mandates don't cease at the expiration of the Mandate

The principle of law that rights once granted or recognized under a treaty or other legal instrument do not expire with the expiration of that treaty or instrument is now codified in article 70(1)(b) of the 1969 Vienna Convention on the Law of Treaties (the Treaty on Treaties). This article states that "unless the treaty otherwise provides or the parties otherwise agree, the termination of a

treaty... does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination".

As a result, Jewish rights to Palestine and the Land of Israel remain in full force today under international law.

The South Africa decision on Mandates basically says the same thing: rights gained by a country through a mandate don't expire at the expiration of the mandate.[7]

Article 80 of The UN charter: No right gained by a country through a mandate will expire as a result of the expiration of the mandate.

End Notes

[*] *Jewish National Home* and "homeland for the Jewish people" were a less in-your-face way of saying "Jewish State."

[1] See, for example, this, this, this, this and this, for starters. Other articles can be retrieved by googling for "Howard Grief" and/or "Yoram Shifftan".

OFICL chairman Mark Kaplan has pointed out that IDF's presence in the West Bank has added to this misconception of illegal activity.

> "Israel chose to adopt a policy of military rule in 1967, which makes it smell of occupation. And the world says it is illegal occupation because of all the propaganda that's been out there. Israel's presence in Judea and Samaria does not qualify as an occupation under international law because of the Anglo-American Convention -- and if you look at the Hague and Geneva conventions."
> (http://www.jpost.com/servlet/Satellite?cid= 1259243026960&pagename=JPArticle%2FShowFull).

[2] Jacques Gauthier, Thesis Defense,
http://www.sustainabilitank.info/2007/12/02/an-e-mail-that-is-about-jacques- gauthiers-phd-dissertation-on-the-legal-status-of-jerusalem-an- important-document-to-be-read-by-the-annapolis-process-and-the-un-lawyers/,

[3] Howard Grief, *The Legal Foundation and Borders of Israel under International Law: A Treatise on Jewish Sovereignty over the Land of Israel*, pg 204

[4] Jacques Gauthier re: minutes of San Remo Conference.
http://docstalk.blogspot.com/2007/11/jerusalem-is-jewish-issue.html

[5] Joan Peters, *From Time Immemorial: The Origins of the Arab-Jewish Conflict Over Palestine,* pg 236.

[6] Jacques Gauthier, Thesis, pg 404.

[7] Jacques Gauthier.
http://www.globalpolitician.com/26079-israel-west-bank-settlements

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